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Divorce--Future Installments of Alimony or Maintenance Automatic Lien

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identify locality, rather than to make more certain any limits or bounds in the deed. It would be a hazardous policy to allow a grantor to lessen the amount of land apparently conveyed by his deed by a general reference to some other deed or paper. Imposition could be easily practiced under such a rule, as grantees rarely pay much attention to such references, or know whether they affect their interests or not." (Italics supplied.)

It is admitted that the cases considered in this comment are not specifically pointed toward the quantum of interest conveyed. The cases seem to make no distinction between quantum of interest and physical quantity of land in so far as the descriptive language used is concerned. Our court states that the intention of the parties controls as to the quantum of interest conveyed. There seems to be no reason why the same language should not manifest the same intention as to quantum of interest that it manifests toward physical quantity of land. The cases seem to draw a line as to the effect of such a reference back between a general reference and a specific or particular reference, holding particular references to be controlling, but not giving such weight to a general reference. For a reference to be particular there apparently must be some language in addition to a bare statement of source of title, from which the court can find an intention of the grantor to include the document referred to within the present description. On this basis, it appears that the West Virginia court has given a general reference a controlling effect. The possible consequences of such a decision seem adequately pointed out in the quoted portion from the *Webster Woolen Co.* case, *supra.*

J. K. B.

DIVORCE—FUTURE INSTALLMENTS OF ALIMONY OR MAINTENANCE AUTOMATIC LIEN.—In a vendors' action for specific performance and to quiet title with regard to an alleged defect founded upon a decree for divorce and maintenance money for the support of minor children, the Iowa court held than an installment or support money judgment does not constitute an *automatic* lien upon real estate for future unpaid installments. *Slack v. Mullenix,* 66 N.W.2d 99 (Iowa, 1954).

The cases throughout the United States are in conflict as to whether a decree for alimony or maintenance money will in itself operate as a lien on the defendant's realty. That the decree will

not, see *Chero-Cola Co. v. May,* 169 Ga. 273, 149 S.E. 895 (1929); that it will, see *Bray v. Landergren,* 161 Va. 699, 172 S.E. 252 (1934). However, the purpose of this comment is to point out the position of the West Virginia court on this specific question: Does a divorce decree providing for alimony or maintenance money for minor children constitute an automatic lien on defendant's realty as to future installments? Our court has said that there is no rational basis for a distinction between alimony decreed to be paid to a wife and sums to be paid to her for the maintenance of children. *Korczyk v. Solonka,* 130 W. Va. 211, 42 S.E.2d 814 (1947); see also *Robinson v. Robinson,* 131 W. Va.160, 50 S.E.2d 455 (1948).

The first case in this state which declared future installments to be a lien on the defendant's realty was *Goff v. Goff,* 60 W. Va. 9, 53 S.E. 769 (1906). There the wife was awarded annual alimony, payable quarterly, and the decree declared the alimony a lien on the husband's realty, though it was payable in installments in the future. The court based its decision on a West Virginia statute, substantially the same as W. VA. CODE c. 38, art. 3, § 6 (Michie, 1949), providing that every judgment or decree for money shall be a lien upon the defendant's land. That the court may declare the lien in the decree, see *Goff v. Goff, supra; Foggin v. Furbee,* 89 W. Va. 170, 109 S.E. 754 (1921); *Reynalds v. Reynolds,* 68 W. Va. 15, 24, 69 S.E. 381, 385 (1910).

The question of the automatic lien was squarely before the court in *Gain v. Gerling,* 109 W. Va. 241, 153 S.E. 504 (1930). The supreme court, in reversing the lower court, followed the *Goff* case and held the future installments to be a lien. To the same effect, see *Korczyk v. Solonka, supra; Holcomb v. Holcomb,* 122 W. Va. 293, 295, 8 S.E.2d 889, 890 (1940). It is to be noted that in the *Gain, Holcomb* and *Korczyk* cases the decree did not declare the lien, yet the court by decision, citing the *Goff* case, found the lien to exist both as to matured and future installments.

As the law in West Virginia stands today, the court, under statutory interpretation, has the power to *make* a decree for alimony or support money a lien on the husband's realty for both matured and future installments; in the absence of such a recital in the decree the same result is reached under court decisions. The result reached by our court seems not a desirable one. The Iowa court, in *Slack v. Mullenix, supra,* reaches a better result. Where the decree has been docketed, thus affording constructive notice to subsequent parties, or where such parties have actual notice of the decree, the result reached by the West Virginia court will

serve to restrain the transfer or encumbrance by the husband of his realty. *United States v. Spangler,* 94 F. Supp. 301 (W. Va. 1950). Under the present law of West Virginia there seems to be no way to discharge the lien. *United States v. Spangler, supra.* This is true though the husband has never defaulted in payment, is solvent and apparently will remain solvent. Since the position of our court is well settled, it would seem that the problem is a proper one for legislation. A procedure should be provided whereby, in a proper case, the lien could be discharged. For example, the legislature could provide for a lump sum payment of the future installments to become due based on the life expectancy of the wife.

Public policy should not support a rule of law which operates as a major restraint upon alienation of realty.

L. H. H.

FEDERAL ESTATE TAXATION—CONDITIONAL BEQUESTS TO CHARITY —NO DEDUCTION.—*S* established a testamentary trust for the joint lives of his wife and daughter, and the life of the survivor, with remainder to the living descendants of the daughter, or in their absence, one-half to collateral relatives and one-half to a charity, or if no named collaterals then survived, all to the charity. At *S*'s death his daughter was twenty-seven years old, divorced, and childless. The executor deducted in the estate tax return the actuarially computed present value of the conditional bequest of one-half of the residue, without deduction for the half subject to the more remote contingency. The deduction was disallowed by the commissioner but sustained by the tax court in *Estate of Sternberger v. Comm'r,* 18 T.C. 836 (1952), *aff'd,* 207 F.2d 600 (2d Cir. 1953). *Held,* reversed. No deduction is allowable unless the possibility that charity will not take is so remote as to be negligible. *Comm'r v. Estate of Sternberger,* 75 Sup. Ct. 229 (1955) (6-2 decision.)

The statute allows deduction from the gross estate of transfers for public, charitable, or religious uses in determining the taxable estate. INT. REV. CODE § 812 (d). These provisions remain unchanged in the 1954 code. *Id.* at §§ 2051, 2055.

Humes v. United States, 276 U.S. 487 (1927), established the doctrine that this does not authorize deduction for a contingent gift to a charity where the bequest is incapable of evaluation in a